

regular job duties in accounts payable until her symptoms worsened to a point that she could not do her work. She notified the respondent of her injury on March 18, 1996.

The respondent, through Felicia Evans of the Human Resource Department, completed an accident report and referred claimant to R. L. Wilson, M.D., of the Broadway Occupational Medicine Clinic. Claimant related to Dr. Wilson a history of injuring her wrist when the wind jerked a door at work. Dr. Wilson diagnosed a ganglion cyst of the left wrist and referred claimant for further treatment to plastic surgeon Fount K. Hartley, M.D.

Claimant saw Dr. Hartley on March 19, 1996, who diagnosed claimant with a recurrent left wrist ganglion cyst. Claimant gave Dr. Hartley a history that her left ganglion cyst appeared after an injury at work. Claimant also notified Dr. Hartley that she had an earlier ganglion cyst surgically removed at the same sight due to a work-related injury in 1990. Dr. Hartley's note of March 19, 1996 indicated claimant had previous successful surgery but recent injury seemed to cause a recurrence. Dr. Hartley surgically excised the recurrent ganglion cyst on April 2, 1996. He took the claimant off work from April 2, 1996 through April 22, 1996. Claimant was returned to work full time without restrictions.

Respondent argued that claimant had not presented credible evidence in the preliminary hearing record to prove that her left wrist ganglion cyst had been caused by her work activities with respondent. Respondent claimed that the ganglion cyst could just as well have been caused by nonwork activities engaged in by the claimant.

The Appeals Board finds for preliminary hearing purposes that claimant's testimony, coupled with the medical records admitted into the preliminary record, prove that it is more probably true than not that her left wrist ganglion cyst was work related. Claimant was not symptomatic until the March 8, 1996 incident with the door. Claimant also gave a consistent history of the incident to the treating physicians. Dr. Hartley's medical records attributed the ganglion cyst to the door incident.

(2) An employee is required to notify the employer within ten days after they suffer a work-related accident or establish just cause for failure to give the required ten day notice. See K.S.A. 44-520. Claimant testified that she was injured on March 8, 1996. Claimant verified this date of accident by relating the date to the day of a fellow employee's last day worked. Respondent argued that claimant reported to the Human Resource Department that her date of accident was March 7, 1996 instead of March 8, 1996. Therefore, respondent argued that since the claimant did not give notice of accident until March 18, 1996, her claim for compensation benefits is barred by the ten day notice statute. Claimant acknowledged that the accident report did contain the date of March 7, 1996 as the accident date. However, claimant specifically denied that she told the respondent that March 7, 1996 was her accident date instead of March 8, 1996.

The Appeals Board finds claimant's testimony to be credible as the Administrative Law Judge also had to find. Accordingly, giving some deference to the Administrative Law Judge's conclusions as she had the opportunity to personally observe the claimant testify and assess claimant's credibility, the Appeals Board finds that claimant was injured on March 8, 1996 and thus gave the respondent notice within the required ten days.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated May 7, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: David H. Farris, Wichita, KS
Lawrence D. Greenbaum, Kansas City, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director